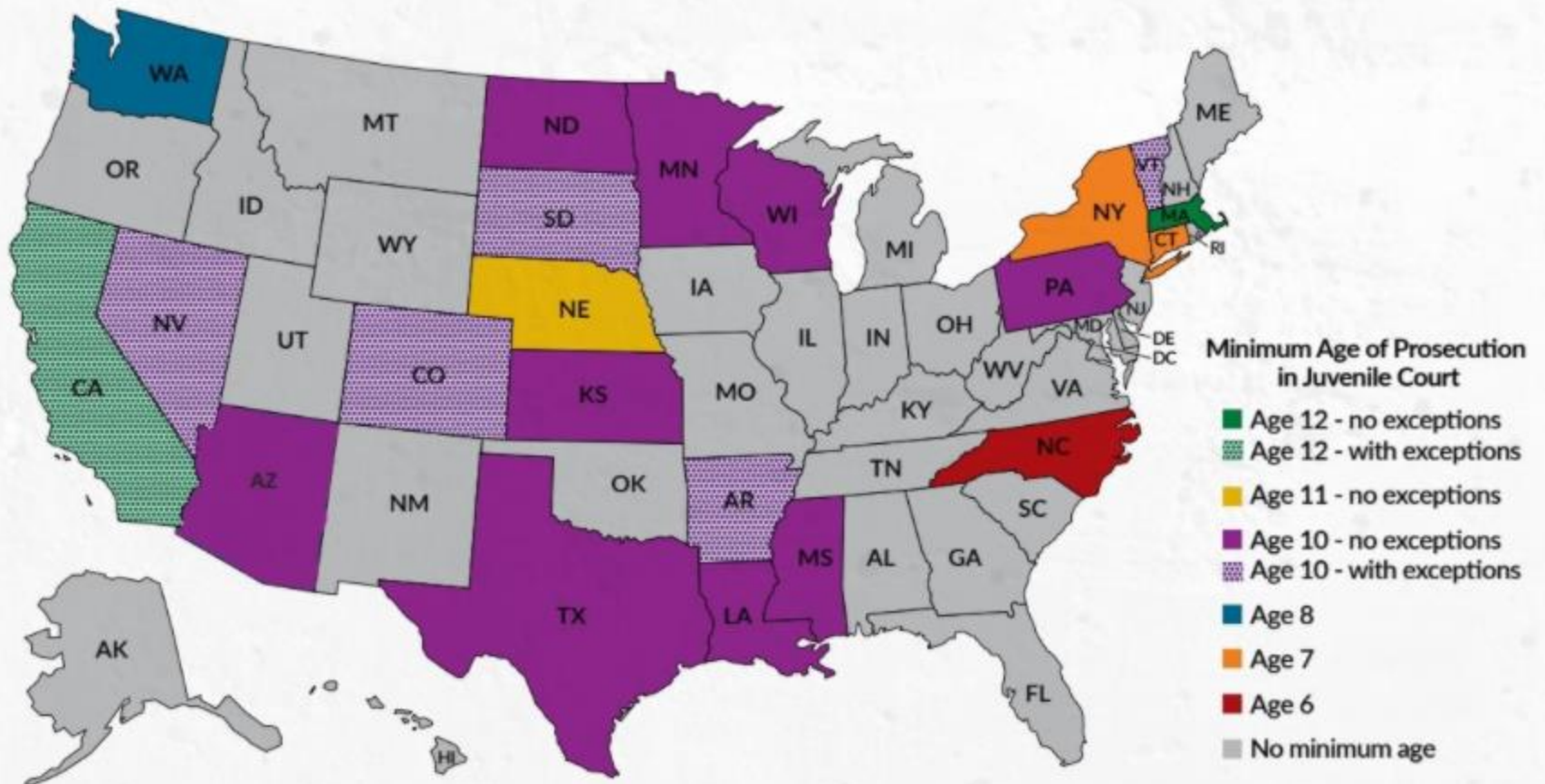


# Minimum Age and Capacity/Competency

October 9, 2020



UNC  
SCHOOL OF GOVERNMENT



National Juvenile Defender Center, January 2020



# Two Threshold Questions

1. Should developmental capacity to understand the nature of illegality of the act play a role in setting a minimum age?
2. Is there an age under which children are developmentally not competent to stand trial?

# Infancy Defense

The bottom of the slide features a decorative design consisting of two overlapping light blue rectangular blocks. The block on the left is wider and shorter, while the block on the right is narrower and taller, creating a stepped effect. The background of the entire slide is a solid dark blue.

# Traditional Concept of Capacity



Right vs. Wrong

Good vs. Evil

Understand  
nature of  
illegality of the  
act

Has a three-year-old who walks out of the grocery store with a candy bar that he hasn't paid for committed a crime?

# English Common Law



Under 7 presumed doli  
incapax



7 – 14 rebuttable  
presumption, with  
decreasing legal protections  
as age increases



15+ presumed to have  
capacity

# Creation of Juvenile Courts

- No infancy defense
- Broad jurisdiction beyond crimes
- No distinction between criminal and noncriminal conduct
- Intervention by state, as parent, to cure children and save them from punishment
- Indeterminate and nonproportional dispositions focused on needs

# Juvenile Court Purpose, 1919

“The duty shall be constant upon the court to give each child subject to its jurisdiction such oversight and control in the premises as will conduce to the welfare of such child and to the best interests of the state.”



# Shift Toward Criminal Model

*In re Gault*, 87 S.Ct. 1428 (1967)

- Notice of charges
- Right to counsel
- Confrontation
- Self-incrimination
- Cross-examination
- Appellate review
- Transcript of proceedings

“Under our Constitution, the condition of being a boy does not justify a kangaroo court.”

S.L. 1969-911  
“An Act To  
Revise And  
Clarify The  
Jurisdiction  
And  
Procedures  
Applicable To  
Children In the  
District Court”

“These procedures are intended to provide a simple judicial process for the exercise of juvenile jurisdiction by the district court in such manner as will assure the protection, treatment, rehabilitation or correction which is appropriate in relation to the needs of the child and the best interest of the State. Therefore, this article should be interpreted as remedial in its purposes to the end that any child subject to the procedures applicable to children in the district court will be benefitted through the exercise of the court’s juvenile jurisdiction.”

# 1979 Juvenile Code Revisions

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Incompetency

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Minimum age of 6

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Intake process and nondivertible offenses

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Petitions must provide notice of what being accused of

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Procedures for secure custody hearings

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Any juvenile alleged to be within juvenile jurisdiction has right to be represented by counsel and is presumed indigent

# 1979 Juvenile Code Revisions

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Nontestimonial identification  
language

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Colloquy between judge and juvenile  
required prior to admission

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Rules of evidence apply in adjudication hearing;  
standard of proof is beyond a reasonable doubt

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Added dispositional alternatives, including  
must be 10 to be sent to training school

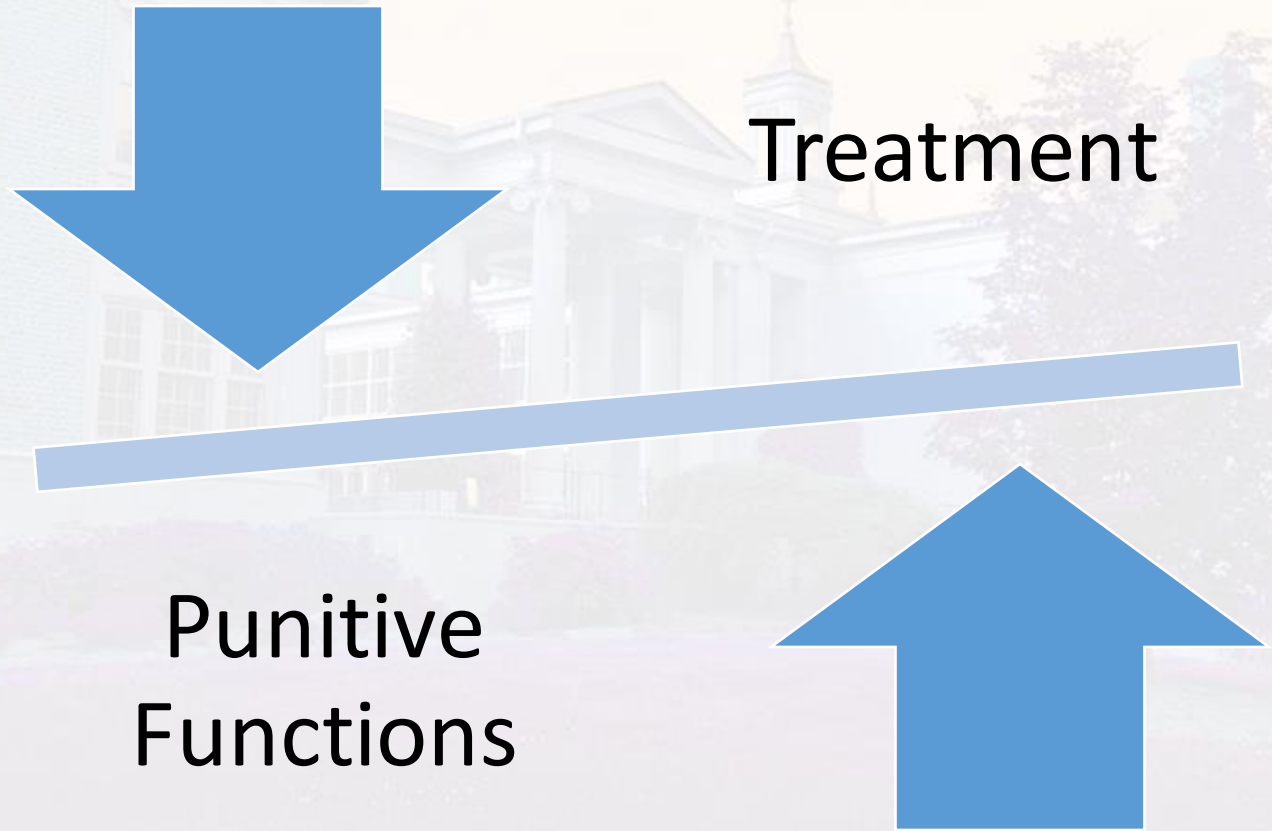
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Prosecutor must represent the State at  
transfer hearing and in all contested  
delinquency hearings

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# Should Infancy Play a Role?

Is there a role  
for the infancy  
defense in this  
kind of a  
juvenile justice  
system?



# Competency and Developmental Immaturity



Are young children  
competent to stand trial?

## Current Juvenile Competency Standard

§ 15A-1001. No proceedings when defendant mentally incapacitated; exception. (a) No person may be tried, convicted, sentenced, or punished for a crime when **by reason of mental illness or defect** he is **unable to understand the nature and object of the proceedings against him, to comprehend his own situation in reference to the proceedings, or to assist in his defense in a rational or reasonable manner**. This condition is hereinafter referred to as "incapacity to proceed."



# What Does it Take to Be Competent?

Grisso, 2003

## Factual Understanding

Basic comprehension of the purpose and nature of the trial process

## Reasoning

Ability to provide relevant information to counsel and to process information

## Appreciation

Ability to apply information to one's own situation in a way that isn't distorted or irrational



# Youth's knowledge of trials and their participants

- By age 13 most children accurately identify most of the trial participants and purposes of trials
- Peterson-Badali (1992) and (1997) found substantial increases in trial knowledge between 7 and 13, suggesting it is relatively undeveloped in preadolescent years
- Cooper (1997) found a significant age effect – youth 13 or younger performed more poorly than 14, 15, or 16
- Still an open question about whether they can learn what they need to know (Grisso, 2000)

## Conceptualization of a right

- Melton (1980) found that public school children below age 13 or 14 have a preconventional view – in that rights are given and taken away by authority
- Other research found that even older adolescents continue to have a preconventional view. For example, think that the court can penalize the defendant for exercising the right against self-incrimination

(Grisso, 2000)

## Acquiring information one is given

- Only studies on this are on impact of Miranda warnings; studies found good understanding for 16 – 19-year-olds; younger youth tended to misconstrue the warnings – i.e. remain silent until told to talk
- 10 -12-year-olds scored significantly more poorly than 13 - 15-year-olds

(Grisso, 2000)

## Communicating information

- Tentative evidence that younger adolescents may be at risk of difficulties in communication as a result of developmental immaturity that could interfere with their assistance to counsel
- Younger adolescents are more prone to offer inaccurate information to people in authority when pressured, more likely to change their stories

(Grisso, 2000)

# Reasoning

- Perterson-Badali's studies showed marked differences for younger children – 10 and 13 in one study and 7- 12 in other study.  
(Grisso, 2000)
  - For children under 10, reasoning contained little explicit understanding of the relationship between important legal variables (such as the strength of evidence) and their plea decisions.
  - Almost none of the participants understood what a plea of not guilty meant. Many children, especially younger children, stated that their lawyer could breach confidentiality.

“For youth under 14, the balance of evidence suggests they are at greater risk than most adults for deficits in abilities associated with adjudicative competence”

Grisso's  
conclusion  
in 2000

## Research Findings

Grisso, T. et al, *Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants* (2003)

Studied competency of 1,393 participants ages 11 – 24 (some in detention and others in the community).

**Findings:** Found significantly impaired reasoning for 30% of youth ages 11 -13, 19% of youth ages 14 and 15, and 12% of youth age 16 and older. Youth with system experience did not perform better than youth without system experience. **Younger youth of lower intelligence were especially likely to be deficient in the necessary capacities associated with trial competence. Among 11- to 13-year-olds, more than one half with an IQ between 60 and 74, and more than one third with an IQ between 75 and 89, were significantly impaired.** Approximately 2/3 of the detained juveniles aged 15 and younger had an IQ that was associated with a significant risk of being incompetent to stand trial because of impaired understanding or reasoning or both. The proportion of participants who chose confession as the best choice decreased with age, from about one half of the 11- to 13-yearolds to only one fifth of young adults.



# Food For Thought

Are young children  
competent according to  
the current legal standard?

Is the adult standard for  
competency the correct  
standard for children?  
Should developmental  
maturity play a role?